THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.1041 of 1995

Dated: 08.08.2006

Between
G.Govinda Rao

…..Petitioner

and

1.The Visakhapatnam Port Trust,
Visakhapatnam, rep, by its Chairman
and another.

….Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.1041 of 1995

ORDER:

This writ petition is filed seeking a Mandamus to declare that the orders of the 2nd respondent in proceedings No.E/M/PC/6599/2150 dated 7.3.1994 are passed without jurisdiction and further to declare the proceedings of the 1st respondent No.A1/Mech/Appeal/3292/94 dated 23.6.1994, including the proceedings in Review Petition No.E/M/PC.6599/12092 dated 28.12.1994 as illegal and arbitrary.

It seems that the petitioner was initially appointed as Greaser w.e.f 19.4.1979 in the Visakhapatnam Port Trust. Subsequently he was promoted as driver w.e.f 1.8.1981. While so, the petitioner was served with a charge sheet dated 26.6.1992 alleging that he had pilferaged diesel oil of 10 litres and tampered the speedo meter of the vehicle and absconded from duty on the afternoon of 20.5.1992. After conducting a detailed enquiry into the matter, the petitioner was imposed with punishment of reversion from the post of Driver to that of Greaser and further imposed with a punishment of reduction in the pay scale, on 7.3.1994. Aggrieved by the same, the petitioner filed an appeal and the same was dismissed. Thereafter, he filed a review

petition and that also met with the same fate. Aggrieved thereby, the present writ petition is filed.

It seems that on 20.05.1992, the petitioner reported to duty in the morning hours and filled 10 litres of HSD oil into the tank of jeep. Thereafter, he made some trips. However, in the afternoon on 20.05.1992, he left the place and went to his house. According to the petitioner, he suffered from fever, therefore, he went home without informing to anybody. However, at 13.00 hours, the Charged Officer verified and drew five litres of HSD oil from MV Section as there was no diesel available in the tank of the vehicle and engaged one Nakka Appa Rao as driver. Thereafter, on 21.5.1992 the vehicle was not operated. Further, on the morning of 22.5.1992 by the time, the petitioner reported to duty, 9 litres of diesel was available in the vehicle.

It is the case of the petitioner that on 20.5.1992 the vehicle was traveled about 87 KM as per the evidence of SE2 ie., Officer incharge. On the morning of 20..5.1992 only one litre diesel was available and after filling with 10 litres, it has come to 11 litres and on the morning of 22.2.1992, 9 litres of diesel was available. Once, this is so, the question of pilferaging the diesel or tampering with speedo meter does not arise. Further, it cannot be said that the petitioner absconded from duty only to cover up the pilferage of diesel._Insofar as charge No.3 ie., tampering of the speedo meter is concerned, it was not proved.

Insofar as the charge No.2 is concerned, the petitioner himself admitted that in view of his ill health he went home. Insofar as pilferage of 10 liters of HSD oil is concerned ie., charge

No.1, if the facts are taken into consideration on the morning of 20.5.1992, the total HSD oil available in the vehicles was 11 litres with previous balance of 1 litre and on 20.5.1992 the vehicle was traveled 87 KM according to SE2. The other driver N.Appa Rao was not examined before the enquiry officer though he was a necessary witness to prove as to non-availability of diesel on the afternoon of 20.5.1998 etc. On 21.5.1992, the vehicle was not operated and on 22.5.1992 9 litres of oil is available as per the statement of SE2 and also as per the record. Once this is so, the question of pilferage of HSD oil also does not arise.

Be that as it may, it is not the case of the respondent-Management that the petitioner is in the habit of pilferage of HSD Oil and earlier he was found guilty or was punished. In the absence of all these things, assuming that the charge is proved as to absconding from duty the punishment imposed on the petitioner by proceedings dated 7.3.1993 as confirmed by the appellate authority and the review authority in my considered opinion is arbitrary and excessive.

Therefore, I deem it appropriate that since the petitioner suffered for more than 10 years, this punishment itself is sufficient and there is no other punishment need to be imposed on the petitioner. Therefore, instead of remanding the matter for reconsideration, the matter can be given a quietus here itself by I modifying the proceedings dated 7.3.1994 as confirmed by the appellate authority and the review authority.

In the circumstances, the petitioner stands reverted to the post of Greaser from that of Driver for a period of 10 years from

7.3.1994 till 6.3.2004. There after, he shall stand posted in the category of driver. The punishment of imposition of reduction of pay in the scale of the petitioner is set aside.

In the result, the petitioner is entitled for all the arrears of pay from 7.3.1994 till date in the post of driver and also for the arrears of the deduction made in the salary by reducing salary.

Writ petition is disposed of accordingly. No costs.

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08.08.2006

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